

## BEST AVAILABLE COPY

### REMARKS/ARGUMENTS

A three month extension of time with a check for the appropriate small entity fee accompanies this response.

The parent of this application is Application Number 09/182,101. The parent application issued on March 19, 2002, and was assigned U.S. Patent Number 6,360,181.

The new owner of this application and the parent application/patent is Brixx Technologies Limited. A power of attorney from Brixx Technologies Limited accompanies this response. The new owner grants Power of Attorney to Paul Grandinetti, Reg. No. 30,754. The executed Power of Attorney is enclosed. (Enclosure 1.)

The original owner of this application was Brixx Limited. Brixx Limited executed a Debenture and a Sale Agreement with Planning Objects Limited of which an Acquisition of Assets/Change of Ownership conveyance was recorded on Reel 012762 at Frame 0302. This conveyance was subject to a deferred element of the consideration payable under the Sale Agreement by Planning Objects Limited, which was breached by Planning Objects Limited.

The ownership of this application was reclaimed by Brixx Limited and Brixx Limited exercised its power of sale under the Debenture and sold this application to Piermount Limited. One copy of this Deed of Assignment of Certain Assets of Planning Objects Limited of May 21, 2002, is submitted concurrently with this response for recording by the Office. A second copy of the deed is attached for the Examiner's convenience. (Enclosure 2.)

**Appl. No. 10/047,679**  
**Response**

Piermont Limited changed its name to Brixx Technologies Limited. A copy of the Certificate of Incorporation on Change of Name (Company No. 4431104) is submitted concurrently with this response for recording by the Office. A second copy of the change of name is attached for the Examiner's convenience. (Enclosure 3.)

Brixx Technologies Limited is a small entity.

The Office Action of October 2, 2003, is understood to reject the application under 35 U.S.C. §§ 101, 102, 112, and/or other bases. The applicants traverse these and any and all pending rejections and request reconsideration.

The claimed invention meets all the requirements of 35 U.S.C. § 101 for patentability. The claimed invention of this application is not double patenting of the subject matter of the parent application/patent. The applicants request that the Examiner conduct an interview with their attorney regarding this rejection. This rejection should be withdrawn.

The claimed invention meets all the requirements of 35 U.S.C. § 102 for patentability. The claimed invention of this application is not anticipated by the Examiner's citation(s) of art. The applicants request that the Examiner conduct an interview with their attorney regarding this rejection. This rejection should be withdrawn.

The claimed invention meets all the requirements of 35 U.S.C. § 112 for patentability. The claimed invention is enabled and distinctly claimed. The applicants request that the Examiner conduct an interview with their attorney regarding this rejection. This rejection should be withdrawn.

**Appl. No. 10/047,679**  
**Response**

The applicants traverse any and all rejections pending in this matter and request reconsideration.

In view of the foregoing, it is submitted that this application is now in condition for allowance and an early Office Action to that end is solicited.

Respectfully submitted,

1 April 2004  
Date

Paul Grandinetti  
Paul Grandinetti  
Reg. No. 30,754

LEVY & GRANDINETTI  
Suite 1108  
1725 K Street, N.W.  
Washington, D.C. 20006-1423

(202) 429-4560

21st  
DATED: 21<sup>st</sup> MAY 2002

BRIXX LIMITED

(1)

- and -

PIERMOUNT LIMITED

(2)

---

**DEED OF ASSIGNMENT OF CERTAIN ASSETS OF  
PLANNING OBJECTS LIMITED**

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**MATTHEW ARNOLD & BALDWIN**  
21 Station Road  
Watford  
Hertfordshire  
WD17 1HT

Tel: 01923 202020  
Fax: 01923 215003  
Ref: AB/31635.3  
email: [Insolvency@mablaw.co.uk](mailto:Insolvency@mablaw.co.uk)

21st

THIS DEED is made on 21<sup>st</sup> May 2002;

**BETWEEN:-**

- (1) **BRDOX LIMITED** a company registered in England with company number 03245653 whose registered office is at Sherlock House, 73 Baker Street, London W1U 6RD acting by its administrators, **PETER SCHOLLY DUNN** and **SIMON ROBERT THOMAS** ("the Administrators" which expression shall include either or both of them) both of Tenon Recovery, Sherlock House aforesaid ("the Vendor");
- (2) **PIERMOUNT LIMITED** a company registered in England with company number 4431104 whose registered office is at 2<sup>nd</sup> floor, 207 High Street, Orpington, Kent BR6 0PF ("the Purchaser").

**WHEREAS:-**

- (A) The Administrators were appointed administrators of the Vendor on 27<sup>th</sup> September 2001;
- (B) The Administrators, acting as agent of the Vendor, entered into the Sale Agreement with Planning Objects Limited ("Planning Objects"). As security for the deferred element of the consideration payable under the Sale Agreement, Planning Objects granted the Debenture to the Vendor;
- (C) Planning Objects is now in breach of the terms of both the Debenture and the Sale Agreement. The Administrators have therefore decided to exercise the Vendor's power of sale under the Debenture and to sell the Charged Assets to the Purchaser.

**NOW IT IS HEREBY AGREED as follows:-**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1. Throughout this Agreement including the Schedules the following words and phrases shall have the following meanings:-

<b>"Charged Assets"</b>	the assets charged to the administrators by Planning Objects pursuant to the Debenture which for the avoidance of doubt shall include all present and future Intellectual Property Rights (as defined in the Deed of Variation);
<b>"Completion"</b>	completion of the sale and purchase of the Charged Assets in accordance with Clause 4;
<b>"Consideration"</b>	the consideration payable hereunder in accordance with clause 3 hereof;
<b>"Debenture"</b>	the Debenture granted by Planning Objects to the Vendor and dated 28th September 2001 as amended by the Deed of Variation;
<b>"Deed of Variation"</b>	a deed of variation dated ... October 2001 entered into between the Vendor and Planning Objects Limited;
<b>"Sale Agreement"</b>	an agreement between the Vendor and Planning

Objects to sell the business and assets of the Vendor to Planning Objects dated 28<sup>th</sup> September 2001;

**"Transfer Date"**

commencement of business on the date of this Agreement;

- 1.2. Words and phrases defined in the Companies Act 1985 (as amended by the Companies Act 1989) the Insolvency Act 1986 and the Insolvency Rules 1986 (as amended) shall bear the same meanings in this Agreement except as expressly defined in this Clause 1.

**2. SALE**

- 2.1. In exercise of its power of sale contained in the Debenture and in consideration of the Consideration (receipt of which is hereby acknowledged) the Vendor HEREBY ASSIGNS to the Purchaser the Charged Assets at the Transfer Date upon the terms and conditions set out in this Deed.
- 2.2. There shall be excluded from the sale effected by this Agreement any other asset or right not included in Clause 2.1.
- 2.3. Following Completion the Vendor shall not object to the use of the trading "Brixx" by the Purchaser. For the avoidance of doubt nothing herein shall purport to transfer the name "Brixx" to the Purchaser and neither the Vendor nor the Administrators make any representation whatsoever in relation to the ownership of the name "Brixx".

**3. CONSIDERATION**

- 3.1. The Consideration for the transfer in clause 2.1 above is [REDACTED]
- 3.2. The Consideration shall be paid on Completion together with any VAT that may be payable. All amounts expressed in this Agreement as being payable by the Purchaser are expressed exclusive of any VAT which may be chargeable thereon. The Purchaser will pay any VAT which may be chargeable.
- 3.3. All sums payable by the Purchaser shall be by transfer of cleared funds or by banker's draft in favour of the Vendor drawn on a London clearing bank.

**4. COMPLETION**

- 4.1. Completion shall take place immediately on the execution hereof and shall be effective from the Transfer Date.
- 4.2. On completion:-
- 4.2.1. possession of the Charged Assets shall be given to the Purchaser subject to any third party rights (including without limitation all rights of distress);
- 4.2.2. title in the Charged Assets shall pass (by physical delivery where appropriate and wherever they may be) to the Purchaser; and

4.2.3. the consideration payable under Clause 3 shall be paid to the Administrators.

5. EXCLUSION OF WARRANTIES

- 5.1. The Vendor sales as mortgagee under its statutory power of sale under section 101 of the Law of Property Act 1925 as amended by clause 6.1 of the Debenture.
- 5.2. It is agreed that the exclusions relating to the sale of the Charged Assets which are set out in Schedule 1 shall take effect as if set out in full in this Clause 5;
- 5.3. For the avoidance of doubt it is hereby declared that in the negotiation execution and implementation of this Agreement the Administrators were and shall be at all times acting only as agents of the Vendor in its capacity as mortgagee. The Administrators shall not be personally liable under this Agreement or under any deed or other document executed in consequence of this Agreement or on or under any associated or collateral agreement or arrangement and the Administrators are a party to this Agreement only for the purpose of receiving the benefit of this declaration and any other covenants in their favour.

6. EMPLOYEES

- 6.1. The parties hereto do not believe that this Agreement shall take effect to effect any transfer of employment by virtue of the Transfer of Undertaking (Protection of Employment) Regulations 1981 which shall not apply;
- 6.2. In any case in which the Purchaser assumes or is held to assume any liabilities to the Vendor's employees or former employees such liability shall be borne by the Purchaser at its expense.
- 6.3. No recourse shall in any event be had or be claimed against the Vendor or the Administrators or by way of an expense of the administration in respect of liabilities or obligations which arise under or out of the effect of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or out of the employment or former employment of any of the Vendor's employees or former employees.

7. NOTICES

- 7.1. Any notice to be given under this Agreement shall be given in writing signed by or on behalf of the party giving it and shall be irrevocable without the written consent of the party on whom it is served.
- 7.2. Any such notice may only be served:-
- 7.2.1. personally by giving it to an individual who is a party or to any director or the secretary of any company which is a party or in the case of the Vendor to one of the Administrators; or
- 7.2.2. by leaving it at or sending it by prepaid first class letter through the post to the address of the party to be served which is set out in this Agreement or if another address in England shall have been notified by that party to all the other parties for the purposes of this clause by notice given in accordance with this clause then to the address of such party which shall

have been so notified for which purpose the latest notification shall supersede all previous notifications.

7.3. Notices shall be deemed served as follows:-

- 7.3.1. in the case of personal service at the time of such service;
- 7.3.2. in the case of leaving the notice at the relevant address at the time of leaving it there;
- 7.3.3. in the case of service by post on the second Business Day following the day on which it was posted and in providing such service it shall be sufficient to prove that the notice was properly addressed stamped and posted in the United Kingdom.

8. GENERAL

- 8.1. This Deed shall as to any of its provisions remaining to be performed or capable of having effect following Completion remain in full force and effect notwithstanding Completion.
- 8.2. This Deed shall be construed and governed according to English Law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.
- 8.3. The parties agree and declare that this Deed and all agreements entered into under this Deed constitute the entire agreement between them concerning the subject matter of this Deed and supersedes all earlier meetings discussions letters and arrangements of whatever kind.
- 8.4. In the event of any default by the Purchaser in paying any monies due under this Agreement to the Administrators the Purchaser shall pay interest thereon at the rate of 5% above the base rate for the time being of Barclays Bank plc calculated on a daily basis from the date of default until all such monies have been paid in full together with all interest thereon.
- 8.5. The benefit of this Agreement may not be sold assigned charged or otherwise dealt with by the Purchaser without the Administrators' consent.
- 8.6. This Agreement may be executed in any number of counterparts and by the parties on separate counterparts but shall not be effective until each party has executed at least one counterpart. Each counterpart when executed shall be an original of this Agreement and all counterparts shall together constitute one instrument.

9. RIGHTS OF THIRD PARTIES

- 9.1. No person not party to the Agreement shall have any right to enforce any term of this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.

10. CERTIFICATE OF VALUE

It is certified that the transaction effected under this Agreement does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value exceeds £60,000.



IN WITNESS of which the parties hereto have executed this agreement as a deed on the date written above

EXECUTED AS A DEED for and on behalf  
of the Administrators by one of them  
without personal liability  
in the presence of:-

Witness Name:

S. KEARW

Witness Address:

54 QUEEN STREET

HENLEY ON THAMES

Witness Occupation:

CONSULTANT

EXECUTED AS A DEED by the Purchaser  
acting by two directors or by a director  
and the secretary

Administrator

Director

Director/Secretary

11 NEWCOFFMAN LTD

**IN WITNESS** of which the parties hereto have executed this agreement as a deed on the date written above

**EXECUTED AS A DEED** for and on behalf )  
of the Administrators by one of them )  
without personal liability )  
in the presence of: )

Witness Name:

Witness Address:

Witness Occupation:

*[Signature]*

*SS Parker*

*73 Buxton St W*

*Insurance Reframer*

*[Signature]*

Administrator

**EXECUTED AS A DEED** by the Purchaser )  
acting by two directors or by a director )  
and the secretary )

.....  
Director

.....  
Director/Secretary

SCHEDULE 1EXCLUSION OF WARRANTIES

1. All representations warranties and conditions express or implied and whether statutory or otherwise are expressly excluded upon and in relation to the sale of the Charged Assets. Without limiting those general words of exclusion there are excluded in particular warranties and conditions as to title quiet possession merchantable quality fitness for any purpose and as to description either as regards the Charged Assets or any asset the use of which the Purchaser may be permitted by this Agreement.
2. The Charged Assets are sold in their present state and condition and whereabouts and subject to all faults and to any extent lien distraint execution or detention or claims of third parties over them or in respect of their use the cost of discharging or compromising any or all of which shall be for the account of the Purchaser.
3. The Purchaser acknowledges and agrees that it has satisfied itself as to the state condition and whereabouts of the Charged Assets and as to their fitness for such purpose or purposes as the Purchaser may intend to use them and as to their correspondence with any description given or to be implied. It is accepted that no reliance has been placed in this regard on any statement or silence of any person whatsoever including the Vendor or the Administrators.
4. Any claim of the Purchaser or of any person claiming through it against the assets of the Vendor shall not take effect otherwise than as a claim by way of pro rata distribution among creditors of equal rank.
5. It is agreed by the parties that the provisions of this Agreement in particular those in this Schedule 1 are fair and reasonable in the circumstances of the Insolvency of the Vendor and accord with normal practice in administration sales. This is the case since:
  - (1) the Purchaser has had an opportunity to inspect and investigate the Charged Assets;
  - (2) the Purchaser is aware of the need to rely on that opportunity by reason of the absence of warranties;
  - (3) the Vendor is insolvent and faces the constraints of selling necessarily imposed on it in those circumstances;
  - (4) the sale of the Vendor's assets is being effected by a chargee under its statutory power of sale;
  - (5) the knowledge of the Vendor's business and of the Charged Assets available to the Administrators and their partners staff and advisers is necessarily limited.
6. The Purchaser accepts and agrees that it shall be its responsibility at its expense to apply for and obtain all necessary or appropriate licences protection orders consents permits and rights to use or have the benefit of the Charged Assets and each of them.
7. Neither the Vendor nor the Administrators shall incur any liability to the Purchaser by reason of any act or omission or negligence or default of any officer or

employee that expression including anyone working under a contract for services as well as of service of the Vendor whose services may be made available to the Purchaser on a sub-contract basis from time to time.

8. Nothing in this Agreement is to require the Vendor or the Administrators to discharge in whole or in part any liability of the Vendor outstanding at the time of the Administrators' appointment.
9. For the avoidance of doubt the Purchaser agrees that in the event that it does not receive title or unencumbered title to all or any of the Charged Assets the Purchaser shall not be entitled to rescind or avoid this Agreement in any way and in particular but without limitation the Consideration paid by the Purchaser shall be unaffected.
10. Nothing in this Agreement shall operate to restrict or affect in any way any right of the Administrators to an indemnity or to a lien whether under Sections 34 37 and 234 of the Insolvency Act 1986 or otherwise.

**DATED** DO NOT DATE **FEBRUARY 2002**

**BRIXX LIMITED**

- and -

**THE ADMINISTRATORS**

- and -

**PLANNING OBJECTS LIMITED**

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**DEED OF VARIATION**

**in respect of the Agreement for the Sale of the Business  
and Assets of Brixx Limited dated 28 September 2001**

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Morrison & Foerster MNP  
21 Garlick Hill  
London  
EC4V 2AU  
Tel: 020 7815 1150  
Fax: 020 7815 1159

-7567

**PATENT**  
**REEL: 012762 FRAME: 0316**

ENCLOSURE 3

## DEED OF VARIATION

THIS DEED is made on ~~DO NOT DATE~~ FEBRUARY 2002.

### BETWEEN:

- (1) **BRIXX LIMITED** (company number 3245653) whose registered office is at 61 Woodside Road, New Malden, Surrey KT3 3AW (the "**Vendor**") acting by its Administrators (as defined below);
- (2) **PETER SCHOLEY DUNN** and **SIMON ROBERT THOMAS**, Insolvency Practitioners of Tenon Recovery Plc, Sherlock House, 73 Baker Street, London W1U 6RD (the "**Administrators**"); and
- (3) **PLANNING OBJECTS LIMITED** (company number 4211769) whose registered office is at 39 Skylark Meadows, Fareham, Hants PO15 6TJ (the "**Purchaser**").

### RECITALS:

- (A) The Administrators were appointed administrators of the Vendor on 27 September 2001 pursuant to an Order of the High Court.
- (B) The Vendor agreed to sell its business and certain assets used in its business to the Purchaser pursuant to the terms of a sale and purchase agreement dated 28 September 2001 and entered into by (1) the Vendor, (2) the Administrators and (3) the Purchaser (the "**Sale Agreement**").
- (C) The Sale Agreement included a definition of "Intellectual Property Rights" but did not include such assets in the description of the assets to be transferred from the Vendor to the Purchaser.
- (D) The parties hereto now wish to amend and vary the terms of the Sale Agreement in the manner set out herein to transfer the intellectual property rights of the Vendor to the Purchaser together with the other transferred assets described therein.

### IT IS AGREED as follows:

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

Terms and expressions defined in the Sale Agreement shall have the same meaning in this Deed, save where the context requires otherwise.

##### 1.2 Interpretation

In this Deed:

- 1.2.1 references to the parties or a party are references to the parties or a party to this Deed;
  - 1.2.2 headings are inserted for convenience only and shall not affect the construction of this Deed;
  - 1.2.3 words importing the singular include the plural and vice versa, and words importing a gender shall include all genders.
- 1.3 In the case of any conflict or ambiguity between the terms of this Deed and the Sale Agreement, this Deed shall prevail.

## 2. AMENDMENTS TO SALE AGREEMENT

2.1 In consideration of the sum of £1 (the receipt and sufficiency of which is hereby confirmed and agreed by the Vendor) the parties hereby agree to vary and amend the terms of the Sale Agreement in the following manner:

2.1.1 the definition of "Transferred Assets" shall be extended to include a reference to the Intellectual Property Rights as follows:

- "Transferred Assets"**
- (1) the Goodwill
  - (2) the Stocks;
  - (3) the Sale Contracts;
  - (4) the Purchase Contracts;
  - (5) Office Furniture & Equipment;
  - (6) the Company Records; and the Software; and
  - (7) the Intellectual Property Rights.**

It excludes the Retained Assets and any asset the transfer, surrender, disposal or dealing of or with which, or any part of or interest in which, would or might cause or occasion a breach of any third party right, or be otherwise contrary to any relevant law"

2.1.2 the description and apportionment of the consideration in Clause 3(1) shall be amended as follows:

"The consideration for the sale is [REDACTED] payable in accordance with the terms of sub-clause (2) below and which shall be apportioned as follows:

Office Furniture and Equipment  
Stocks, Sale Contracts and Purchase Contracts  
Goodwill and Software  
**Intellectual Property Rights**

[REDACTED]"

2.1.3 the description of how the consideration should be paid in Clause 3(2) shall be amended by the addition of a new paragraph (aa) as follows:

"The consideration shall be paid as follows:

- (aa) **the sum of £1 in respect of the Intellectual Property Rights shall be payable on such date agreed between the parties**
- (a) the sum of £10,000 shall be payable on completion
- (b) the balance of £400,000 shall be paid ....[etc]"

2.2 The Sale Agreement, as amended and varied hereby, shall be legally binding in its modified form with effect from 28 September 2001.

2.3 Save as varied by this Deed, the terms of the Sale Agreement shall remain in full force and effect notwithstanding the execution of this Deed.

## 3. EXCLUSION OF PERSONAL LIABILITY

3.1 For the avoidance of doubt, it is hereby declared that in the negotiation, execution and implementation of this Deed and the Sale Agreement, the Administrators were and shall be at all times acting only as agents for the Vendor. The

Administrators shall not be personally liable under this Agreement or on or under any associated or collateral agreement or arrangement and the Administrators are a party to this Agreement only for the purpose of receiving the benefit of this declaration and any other covenants in their favour.

**4. GENERAL PROVISIONS**

**4.1 Successors and Assigns**

This Deed and the Sale Agreement (as rectified hereby) shall be binding upon and shall inure to the benefit of any successors or assigns of the parties hereto and thereto.

**4.2 Whole agreement**

This Deed, the Sale Agreement and the other documents delivered pursuant thereto contain the whole agreement and understanding between the parties relating to the subject matter of the Sale Agreement and supercedes any previous written or oral agreement between the parties in relation to the matters dealt with the Sale Agreement.

**4.3 Invalidity and Severability**

If any provision in this Deed shall be held to be invalid, illegal or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Deed, but the legality, validity and enforceability of the remainder of this Deed shall not be affected. The parties shall negotiate in good faith to agree the terms of a mutually acceptable provision to be substituted for the invalid, illegal or unenforceable provision which, as nearly as possible, gives effect to the intentions of the parties.

**4.4 Variation**

No variation of this Deed shall be effective unless in writing and signed by a duly authorised representative of each of the parties.

**4.5 Further assurance**

At any time after the date of this Deed each party shall, to the extent that it is reasonably able to do so, and shall use all reasonable endeavours to procure that any necessary third party shall, at the cost of the relevant party execute all documents and do all acts and things as may be reasonably required for the purpose of giving full effect to all the provisions of this Deed.

**4.6 Contract (Rights Of Third Parties) Act**

A third party who is not a party to this Deed has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

**4.7 Counterparts**

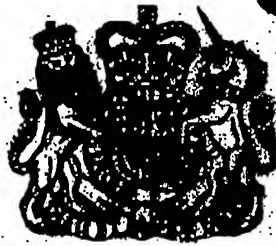
This Deed may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Deed by executing any such counterpart.

**4.8 Costs**

The parties shall pay their own costs and expenses in relation to the preparation, execution and carrying into effect of this Deed.

In-7567





**CERTIFICATE OF INCORPORATION  
ON CHANGE OF NAME**

Company No. 4431104

The Registrar of Companies for England and Wales hereby certifies that

**PIERMOUNT LIMITED**

having by special resolution changed its name, is now incorporated  
under the name of

**BRIXX TECHNOLOGIES LIMITED**

Given at Companies House, London, the 11th June 2002

*Sandra Dufardin*

**SANDRA DUJARDIN**

For The Registrar Of Companies



**C O M P A N I E S H O U S E**

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